

**Award**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Merrill Lynch, Pierce, Fenner & Smith, Inc. (Claimant) v. Nomura Securities International, Inc. (Respondent)

Case Number: 03-05039

Hearing Site: New York, New York

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Nature of the Dispute: Member v. Member.

**REPRESENTATION OF PARTIES**

Claimant Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch"): Howard G. Meyers, III, Esq., Meyers Meyers & Tonachio, New York, NY.

Respondent Nomura Securities International, Inc. ("Nomura") hereinafter referred to as "Respondent": Raymond L. Vandenberg, Esq., Vandenberg & Feliu, LLP, New York, NY.

**CASE INFORMATION**

Statement of Claim filed on or about: July 9, 2003.

Claimant signed the Uniform Submission Agreement: July 8, 2003.

Statement of Answer filed by Respondent on or about: September 2, 2003.

Respondent signed the Uniform Submission Agreement: September 2, 2003.

**CASE SUMMARY**

Claimant asserted the following causes of action: negligence; breach of contract; and violations of New York Stock Exchange ("NYSE") Rule 180; National Association of Securities Dealers ("NASD") Rule 11800; and American Stock Exchange ("AMEX") Rule 752.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

**RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of \$295,748.17 plus interest thereon from December 12, 2002; together with costs and reasonable attorneys' fees.

Respondent requested dismissal of Claimant's Statement of Claim and awarding Respondent its costs.

**OTHER ISSUES CONSIDERED AND DECIDED**

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered.

**AWARD**

After considering the pleadings, and the testimony and evidence presented at the hearing, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent is liable for and shall pay to Claimant compensatory damages in the amount of \$100,000.00
2. Any and all relief not specifically addressed herein is denied.

**FEES**

Pursuant to the Code, the following fees are assessed:

**Filing Fees**

NASD Dispute Resolution will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee	= \$1,000.00
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**Member Fees**

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm that employed the associated person at the time of the events giving rise to the dispute. Accordingly, Merrill Lynch, Pierce, Fenner & Smith, Inc. is a party.

Member surcharge	= \$1,700.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$2,750.00

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm that employed the associated person at the time of the events giving rise to the dispute. Accordingly, Nomura Securities International, Inc. is a party.

Member surcharge	= \$1,700.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$2,750.00

**Forum Fees and Assessments**

The Panel has assessed forum fees for each session conducted. A session is any meeting between the parties and the arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

Three (3) Pre-hearing sessions with Panel @ \$1,125.00	= \$3,375.00
Pre-hearing conferences: January 8, 2004 1 session	
February 24, 2004 1 session	
March 25, 2004 1 session	
Four (4) Hearing sessions @ \$1,125.00	= \$4,500.00
Hearing Dates: June 15, 2004 2 sessions	
June 16, 2004 2 sessions	
Total Forum Fees	= \$7,875.00

1. The Panel has assessed \$3,937.50 of the forum fees against Claimant.
2. The Panel has assessed \$3,937.50 of the forum fees against Respondent.

**Fee Summary**

1. Claimant is solely liable for:	
Initial Filing Fee	= \$ 1,000.00
Member Fees	= \$ 5,200.00
Forum Fees	= \$ 3,937.50
Total Fees	= \$10,137.50
Less payments	= \$ 7,325.00
Balance Due NASD Dispute Resolution	= \$ 2,812.50
2. Respondent is solely liable for:	
Member Fees	= \$ 5,200.00
Forum Fees	= \$ 3,937.50
Total Fees	= \$ 9,137.50
Less payments	= \$ 5,200.00
Balance Due NASD Dispute Resolution	= \$ 3,937.50


All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

**ARBITRATION PANEL**

Paul K. Barenholtz, Esq.	-	Non-Public Arbitrator, Presiding Chairperson
Lionel C. Bandler	-	Non-Public Arbitrator
Linda R. Alpert, Esq.	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument is which is my award.

  
\_\_\_\_\_  
Paul K. Barenholtz, Esq.  
Non-Public Arbitrator, Presiding Chairperson

6/23/04  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Lionel C. Bandler  
Non-Public Arbitrator

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Linda R. Alpert, Esq.  
Non-Public Arbitrator

\_\_\_\_\_  
Signature Date

June 30, 2004

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Date of Service (For NASD Dispute Resolution use only)

**ARBITRATION PANEL**

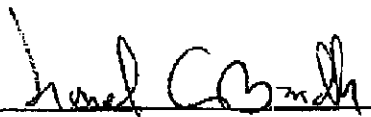
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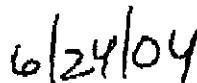
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